FARAD CONSTITUTION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE,
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.397/2007

Subhash Nageshrao Jambholkar
...Versus...
The Maharashtra State Road Transport Corporation and another

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's orders.	Court's or Judge's Orders

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(Shri N.R. Saboo, Adv. for petitioner)
(S/Shri S.C. & A.S. Mehadia, Advs. for respdt.No.1)

CORAM:- A.B. CHAUDHARI, J.
DATED :- 11.07.2007.

Heard Shri Saboo, learned Counsel for the petitioner and Shri Mehadia, learned Counsel for the respondents.

Order of remand made by the Industrial Court remitting the proceedings to the Labour Court for fresh decision by giving full opportunity to both sides to lead their respective evidence and decide the case afresh within a stipulated period is under challenge in the present writ petition.

Learned Counsel for the petitioner submits that the respondents – employer was given sufficient opportunity by the Labour Court to tender evidence to prove the misconduct before

the Labour Court. As a matter of fact, there was no application from the respondents - employer to prove the misconduct before the Labour Court but still the Labour Court has made an order allowing tendering of evidence before the Labour Court, having found the enquiry to be not fair and proper. He then submits that the respondents – MSRTC in fact filed an affidavit of one Shri Ganpatrao Deshmukh – enquiry officer and, thereafter, again failed to avail of the chances given by the Court to lead evidence in support of the misconduct which the petitioner was charged. He then submits that as the enquiry is found to be vitiated, the misconduct is required to be proved and since the Labour Court has granted permission, it was the responsibility of respondents to adduce evidence for proving misconduct, but they did not do so, on the contrary they went on taking dates after dates.

Per contra, Shri Mehadia, learned Counsel for the respondents submits that the order impugned is a remand order and there is no reason for this Court to interfere with the remand order in its extraordinary writ jurisdiction, as both the parties have been given opportunity to lead evidence afresh. He then points out that the proceedings before the Labour Court have been found to be vulnerable in view of the Presiding Officer of the Labour Court obstructing the Counsel for respondents from cross-examining the complainant/petitioner. The Industrial Court had made adverse observation about the role of the Presiding Officer of the Labour Court in obstructing the Counsel for respondents in

putting questions to the witness on material points. He then submits that the right of the respondents to cross-examine the witness and even to take out the admission if possible in the cross-examination about the misconduct alleged against the petitioner cannot be curtailed by the Presiding Officer of the Labour Court. He then submits that the Industrial Court, therefore, has rightly found that the Labour Court was not right in doing so and considering overall conduct of the proceedings in the Labour Court and the fact that the respondents – MSRTC was required to be given opportunity to prove the misconduct, the remand order has been made.

Having heard Counsel for the parties for quite sometime and having gone through the impugned order, it appears that the learned Labour Court abruptly made an order below exh.1 to produce the evidence of respondents on that day only. The submission that the said order was made behind the back of respondents has appealed to the Industrial Court. It further appears that the Labour Court did not specifically make any order warning the MSRTC to tender entire evidence before it by fixing some outer limit. The respondents were not aware that on one day the Labour Court would abruptly make an order asking the respondents to produce their witnesses on the same day. The Industrial Court has, therefore, found it proper to remand the matter to the Labour Court for fresh decision within a stipulated

period by giving opportunity to both sides to lead their respective evidence. In the above background, in my opinion, the Industrial Court which has a supervisory jurisdiction over the Labour Court under Section 44 of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 and the jurisdiction of the Industrial Court under Section 44 of the MRTU & PULP Act has been held to be alike the one under Article 227 of the Constitution of this Court, no error seems to have been committed.

In view of this, I do not find any reason to interfere with the impugned order of remand. The writ petition is, therefore, dismissed. The Labour Court is, however, directed to decide the complaint within a period of four months from today and the respondents shall co-operate the Labour Court by producing the witnesses which they want to examine. No order as to costs.

JUDGE

ssw